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2 and let me rephrase it.

3 If, assuming that the FCC decided
4 not to fund schools and libraries the way it has
5 or decided not to, it could decide to do that for
6 schools and libraries in New Jersey, would Bell
7 Atlantic-New Jersey still honor the commitment in
8 Schedule A to provide those discounted services
9 to schools and libraries?

10 A Yes, they would and if there were
11 no Federal Universal Service Fund, it's quite
12 possible that Bell Atlantic in that instance
13 would push for a State Fund to make the same sort
14 of recovery.

15 Q But at the time the Stipulation
16 was entered into, there was no certainty whether
17 there would be Federal funding or not, and at
18 that time Bell did not push for State Funds to be
19 established, is that accurate?

20 A There certainly was no certainty,
21 that's correct.

22 Q And Bell did not ask for a State
23 Fund to be created at that time, to the best of
24 your knowledge?

25 A No, they did not and in this

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2 Stipulation, all they did was reserve the right
3 to seek reimbursement from the Federal Fund, if
4 there was one, but clearly there is one now. If
5 it had turned out different, nothing would have
6 prevented Bell Atlantic from seeking an
7 establishment of a State Fund.
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2 Q Do you have any understanding
3 whether the other parties to the agreement
4 anticipated that Bell would have asked for a
5 State Fund to offset some of these discounted
6 services?

7 A I can't speculate on what their
8 beliefs would be with respect to a State Fund.

9 Q By the way, were you personally
10 involved in any of the negotiations for either
11 the stipulation or any of the other ONJ
12 commitments?

13 A No, I was not.

14 Q Now, let's go back to Schedule A
15 and for consistency, let's keep our same example
16 on the SMDS.

17 A Okay.

18 Q If that first Line 56 KBGS service
19 -- if the a school was only eligible for a 50
20 percent discount under the matrixes adopted by
21 the State and Federal Government, then, is it
22 Bell's position that the school rationally would
23 elect to use the Schedule A rate and pay Bell
24 \$100 for the SMDS service?

25 A Right. I think they would rather

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2 pay \$100 than \$112.50.

3 Q And, again, it's Bell's position
4 that that the school cannot apply for the Federal
5 discount -- I'm sorry, cannot ask there be a
6 Federal discount amount of 50 percent applied to
7 the \$100 proposed education rate. That's Bell's
8 position?

9 A Right. It's Bell's position that
10 it's an either/or. The discount schedules are
11 alternatives to one another.

12 Q Well, we've already established
13 that's not reflected in any documents at this
14 time aside from your testimony, any document
15 entered into by the party to the stipulation or
16 any Orders of the Board.

17 MR. DENNEHY: I'm going to object
18 to that question, too, Your Honor. I
19 think it somehow mischaracterizes the
20 testimony. I believe that Mr. Pappalardo
21 asked Mr. West if he knew of any
22 sentence in a fairly long stipulation that
23 would establish that. I don't think Mr.
24 West has said that it was not in there, it
25 was just simply that he was not aware of

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2 the sentence and, with that clarification,
3 I have made my objection.

4 COMMISSIONER ARMENTI: I think Mr.
5 West can handle the question.

6 Answer it to the best you can,
7 sir.

8 THE WITNESS: I'm sorry, I'm going
9 to need the question. I apologize.

10 Q Sure.

11 To the best of your knowledge, are
12 you aware of any agreement, stipulation or Order
13 in which Bell was a party to that reflects that a
14 school is based with the either/or proposition as
15 you phrased it to select either the discount rate
16 reflected on Schedule A or the Federal discount
17 rate?

18 A The answer is no because the
19 stipulation that contains Schedule A pre-dated
20 the establishment of the FCC Universal Service
21 discount.

22 Q But you are not limiting your
23 answer just to April 18th and the time period
24 before, I'm talking about up to the present date
25 you were not aware of any other documents that

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2 embody that statement.

3 A No, you're right, but the time
4 that such a document would likely be generated
5 would be during the negotiation phase and that
6 pre-dated the establishment of the FCC Universal
7 Service discounts.

8 Q Given that position, in the
9 example we just talked about where the school
10 uses the education rate, does Bell Atlantic
11 believe that it is entitled to any reimbursement
12 from the Federal Fund?

13 A Yes.

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2 Q What amount does Bell believe it
3 would be entitled to?

4 A If I remember your hypothetical
5 correctly, it would be 50 percent of the \$225.

6 Q Or in other words, \$112.50?

7 A That's correct.

8 Q And we have agreed that the school
9 has paid \$100 to Bell Atlantic?

10 A Yes.

11 Q And if I understand your
12 testimony, the pre-discount price according to
13 Bell Atlantic would be \$225.

14 A Correct.

15 Q Now, returning to the FCC formula
16 for calculating a pre-discount price that we
17 talked about in Paragraph 473 of the Order, we
18 had said that the pre-discount price is the sum
19 of the discounted price paid by a school or
20 library and we have established here that is
21 \$100.

22 Is that correct?

23 A I think at this point we are
24 mixing and matching post-discount rates.

25 Q All I'm trying to do is understand

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2 the pre-discount price so if we could just kind
3 of go through this by step and see if we are
4 mixing apples and oranges or how we are doing it,
5 but is the discounted price paid by a school or
6 library in our example, \$100?
7 A Yes, it is.
8 Q And is the discount amount that
9 Bell will recover from the Universal Service
10 support mechanisms providing that service \$112.50
11 according to Bell Atlantic's position?
12 A Yes, it is.
13 Q And do those two numbers add up to
14 \$212.50?
15 A No, they wouldn't, because the
16 \$100 is a product of applying the Schedule A
17 discounts and not the FCC Universal Service
18 discount.
19 Q Well, when the school applies to
20 the Federal Fund for reimbursement, what number
21 do they put down for the pre-discounted price for
22 the Fund administrator to calculate 50 percent
23 of? Is it \$225 or is it \$212.50 or is it another
24 number?
25 A The pre-discounted rate is the

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2 \$225.

3 Q And a 50 percent discount would
4 be \$112.50?

5 A That's correct.

6 Q But the school is not paying
7 \$112.50, is it?

8 A No, in that scenario the school
9 pays \$100.

10 Q So it's telling the Fund
11 administrator that gets a 50 percent discount on
12 \$225 and so the Fund administrator would take
13 that to mean he is paying a rate of \$112.50 but,
14 in effect, he is really paying a rate of \$100.

15 A No. I think what the school would
16 tell the administrator is the pre-discount rate
17 is \$225. Under Schedule A of the State Plan, the
18 school is paying \$100. But, it is eligible for
19 50 percent of Federal Fund Service Support and
20 that money would remit to, in this case, Bell
21 Atlantic.

22 Q And it's Bell Atlantic's position
23 that under the State Plan, as you refer to it,
24 Bell should still receive Federal money from the
25 Federal Universal Service Fund?

2 A Yes.

3 Q Can you point me to anyplace in
4 the FCC Order where it provides for that?

5 A No. I believe I have answered
6 that question already that, in my opinion, the
7 FCC Order has not contemplated the situation
8 where there are alternative discount plans
9 available.

10 Q Aside from the Schedule A Service,
11 if a School pays \$100 to a carrier and that
12 reflected a 50 percent discount, would you agree
13 that the service was either tariffed or bid at
14 \$200?

15 A Yes, it would.

16 Q But you disagree that \$200 would
17 be the pre-discount price in our example where
18 the school pays \$100 for SMDS?

19 A Right, because the tariff rate is
20 \$225.

21 Q But the school is paying 44
22 percent of that or receiving a 56 percent
23 discount.

24 A Right, because they have opted to
25 get their discount from Schedule A versus the FCC

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2 Universal Service discount matrix.

3 Q And if the school's rate was 20
4 percent?

5 A Okay.

6 Q What would Bell Atlantic believe
7 it should receive as reimbursement from the
8 Federal Fund in that example using the same SMDS
9 Service? Would it be 20 percent of \$225?

10 A Yes, it would.

11 Q And that's \$45?

12 A That's true, yes.

13 Q However, notwithstanding Paragraph
14 473 of the FCC Order, the pre-discount price is
15 not \$100 plus \$45; it's still \$225.

16 A Right, because on this example the
17 \$100 is a post-discount price generated by
18 Schedule A, not the FCC discount matrix.

19 Q And if there is a school similarly
20 situated to the one we are using in our example
21 that wanted to buy the SMDS Service and it was
22 not eligible for any Federal discount, what rate
23 would it receive?

24 A I'm not certain how a school
25 wouldn't be eligible for the Federal discount.

2 Q Let's assume it did not want to
3 apply for the Federal discount. What rate would
4 it be able to get SMDS Service at?

5 A It could get SMDS -- it could pay
6 the tariff rate at \$225 or it could be rational
7 and apply Schedule A and get a post-discount rate
8 of \$100, but in doing so, I think that would
9 imply it certainly was eligible under the Federal
10 Plan. It might not opt for the Federal Plan
11 because the discount was not attractive.

12 Q Is there a requirement that a
13 school apply to the Federal Plan for any
14 discount?

15 A I don't believe so.

16 Q And wouldn't, therefore, the \$100
17 be market rate that other schools should be able
18 to purchase SMDS at?

19 A No. It would be Bell's position
20 that the market rate would be the \$225.

21 Q Would you turn, if you have it, if
22 not, I will read the paragraph, to 484 of the FCC
23 Order.

24 A I have it.

25 Q If you could look at the last

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2 section of the last sentence that begins with "We
3 should require."
4 Do you see that?
5 A I'm sorry, this is 484?
6 Q 484, about the sixth line down all
7 the way to the right.
8 A I see it.
9 Q Could you read starting with, "We
10 should require"?
11 A "We should require that a carrier
12 offer services to eligible schools and libraries
13 at prices no higher than the lowest price it
14 charges to similarly situated non-residential
15 customers for similar services (here and after
16 'lowest corresponding price').
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Q Is the \$100 that we have used in the example of the school who chose not to ask for a discount the lowest corresponding price?

A No, it's Bell's position that the Schedule A post-discount is not equivalent to what the FCC refers as the lowest corresponding price or LCP.

Q So if another school sought bids on the same service, what would they expect to receive from Bell? Assuming a school similarly situated, would they get the \$225 offer or the \$100 rate?

A The offer would be the \$225 rate with the understanding that they would also have the ability to purchase out of Schedule A.

Q Isn't that inconsistent with the requirements that the carrier offer services to eligible schools at prices no higher than the lowest price it charges to a similarly situated non-residential customer?

A I don't see it as inconsistent. I see the situation as being an outgrowth of there being two alternative discount structures, one in the FCC environment and one here in the State.

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2 Q And the State Plan is essentially
3 -- the Schedule A, to your understanding, is the
4 State's own discount program. Is that an
5 accurate way of characterizing it? It's
6 independent of the Federal one so, therefore,
7 it's a State Discount Plan?

8 A Well, it was arrived at and the
9 stipulation between Bell Atlantic-New Jersey and
10 the State Ratepayer Advocate, was approved by the
11 Board, and it includes language in there linking
12 the two along the lines of Bell Atlantic will
13 seek to recover funds from the Federal Universal
14 Service Fund to the extent that it exists.

15 Q I'm not sure I got an answer.

16 Is it a State Plan or is it a
17 Federal Plan that's on Schedule A or is it a
18 mixture?

19 A It's very much a State Plan with a
20 tieback to the Federal Plan.

21 Q Is Bell's position it has a
22 tieback to the Federal Plan which no one from the
23 FCC has signed onto that stipulation.

24 Is that correct?

25 A I wouldn't characterize the

2 Ratepayer Advocate as no one.

3 Q I said no one from the FCC or from
4 the Federal Government.

5 A That's correct.

6 Q So, in effect, we could have a
7 school in one town paying \$100 choosing not to
8 apply for Federal discount yet, a school in the
9 next town over similarly situated that would have
10 to submit to the Fund administrator that the rate
11 it is being charged is a \$225 rate.

12 Is that the way it would work?

13 A It could work that way in that
14 instance. If their Federal discount rate was 50
15 percent, they would receive effectively a rate of
16 \$112.50.

17 I don't know why the school would
18 behave irrationally and not choose the lowest
19 price option. But, I suspect it could work out
20 that way.

21 Q I'm not saying they would behave
22 irrationally, I'm saying there is a school that
23 has a 20 percent discount and here the SMDS has a
24 56 percent discount, it behaves rationally and
25 chooses to pay \$100, does not apply for Federal

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3 However, now there is a school in

8 Is that correct?

12 A Right, and the differences in
13 post-discount rate are always going to exist when
14 the matrix has more than one discount element.

19 A That's no different than if there
20 were no Schedule A and you apply just the FCC
21 rate and in one case, the school is eligible for
22 a 20 percent discount off the \$225 and another
23 school was eligible for a 90 percent discount off
24 the \$225.

25 The pre-discount rate would be the

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2 same, the tariff rate, but the effective rate
3 paid by the school would be quite different.

4 Q I agree with you that the pre-
5 discount rate in your example is the same.

6 However, in the example we've been talking about,
7 we have two different pre-discounted prices. We
8 have one school applying and saying that they
9 have a pre-discount price of \$225 and yet another
10 school is actually paying \$100.

11 A Right, but what they are actually
12 paying is not the same as what the pre-discount
13 rate is. It would be Bell's position even in
14 that situation that the pre-discount rates are
15 identical.

16 Q And Bell's position is that the
17 \$100 is not the lowest corresponding price,
18 notwithstanding that the schools are similarly
19 situated?

20 A That is correct.

21 Q Now, is my understanding correct
22 then that the Federal Fund is really offsetting
23 part of the discount that sets forth on Schedule
24 A?

25 A Yes.

2 Q So in effect, the 56 percent
3 discount that Bell would have provided in whole
4 is now being, using our example of the 50
5 percent, is now being provided up to a 50 percent
6 from a federal fund, is that accurate?

7 A Sure. If you want to focus on
8 Bell. But I think you ought to focus on the
9 schools that are getting the \$100 rate. That's
10 the important thing. And I believe that that's
11 why Ratepayer Advocate signed the stipulation.

12 Q If you have this, the paragraph in
13 your papers, paragraph 527 of the FCC order, if
14 you would return to that?

15 A Okay.

16 Q If you could read the last
17 sentence of that paragraph?

18 A "We note that states are free to
19 establish their own discount program under state
20 funded programs, but such programs would not
21 receive Federal Universal service support."

22 Q Thank you. Is it still your
23 position that the Federal fund is offsetting part
24 of the discounted rate on Schedule A after having
25 read that sentence?

2 A Yes, it is.

3 Q You don't see any inconsistency
4 between your statement and that sentence, is that
5 correct?

6 A Correct.

7 Q You state in your rebuttal
8 testimony at page 6, lines 16 and 17: "That all
9 parties to the ONJ stipulation agree that the
10 BANJ has a right to seek reimbursement under the
11 Universal Service Fund for Schedule A rates."

12 Have I read that accurately?

13 A Yes, that was my interpretation of
14 the stipulation.

15 Q Is it still your understanding
16 that all parties to the stipulation agree with
17 that position?

18 A I'm not aware of a change in
19 positions.

20 Q If I informed you that Bell
21 Atlantic had sought clarification of that
22 position and that the Ratepayer Advocate had
23 opposed the position taken by Bell Atlantic, that
24 we just referred to, let me ask you, are you
25 aware of that?

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A No, I'm not.

MR. PAPPALARDO: No further
questions at this time, Your Honor.

Thank you.

COMMISSIONER ARMENTI: Mr. Laskey?

MR. LASKEY: Thank you,
Commissioner.

CROSS EXAMINATION

BY MR. LASKEY:

Q Good morning, Mr. West.

A Good morning.

Q Mr. West, will you please turn to
page 7 of your rebuttal testimony?

A Okay.

Q On lines 14 and 15 you make
reference to the estimated \$80 million of support
generated by New Jersey customers. Do you see
that?

The reference on lines 14 and 15?

A This is probably a production
thing. My page 7 is lines 9 and 10, but I do see
that statement.

Q If I may, let me hand you a copy
of what was introduced into evidence today as

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2 BANJ-140. And if you would turn to page 7 of
3 that?

4 A Okay.

5 Q So this way we're all on the same
6 page and the same line. Do you see on lines 14
7 and 15 what I'm talking about?

8 A Yes, I do.

9 Q The \$80 million of support that
10 you're referring to there, is that an estimate of
11 what will be paid into the Federal Universal Fund
12 from New Jersey sources?

13 A Yes. I believe the way the
14 calculation was made we looked at New Jersey's
15 share of the total retail revenue for the nation,
16 and I think that was 3.6 percent.

17 And when you multiply the two and
18 a quarter billion by the 3.6 percent, you get
19 something real close to 80 million.

20 Q Now in fact at least initially the
21 \$80 million will be coming from the carriers,
22 isn't that true?

23 There was an assessment on the
24 carriers?

25 A Absolutely an assessment is on the

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2 carriers. The ultimate impact of making such an
3 assessment in Bell Atlantic's point of view would
4 be that customers pay.

5 Q You're implicitly assuming lines
6 14 and 15, each carrier will be able to pass on
7 to it's customers the impact of the assessment?

2 A Yes. What we're implicitly
3 assuming that way are our customers always pay
4 when corporations are dealt additional cost
5 burdens.

6 Q Of course the company that you're
7 employed by operates under a price cap, isn't
8 that true or an alternative plan of regulation?

9 A Yes, it's an alternative form of
10 regulation.

11 In certain rate regulation, rates
12 are capped.

13 Q So whether your company is able to
14 pass on it's share of the assessment to
15 ratepayers is at least subject to question, isn't
16 that true?

17 A It certainly is an issue for
18 debate. But in my opinion in a market based
19 economy, corporations are very good at passing on
20 additional cost.

21 Q You might have to seek
22 clarification of this new assessment as an
23 exogenous event, isn't that true?

24 A I would suspect that would be an
25 option to the company. I'm certainly not aware

2 of any plan to recover it that way.

3 Q If you don't recover it that way,
4 you still have the right to recover it through
5 competitive services or services that are not
6 subject, not rate regulated services, is that
7 true?

8 A That would certainly be another
9 option, yes.

10 Q Do you have any estimate of what
11 portion of the \$80 million will in fact likely be
12 assessed on your company?

13 A My guess is roughly three-fourths.
14 If we're talking about us versus the rest of the
15 carriers in the state.

16 Q Are you making that estimate based
17 on an assumption that the assessment is only
18 based on the interstate revenues?

19 A Yes.

20 Q And if the assessment were to be
21 based on a combined intrastate and interstate
22 revenues, your company's share would be somewhat
23 less, is that true?

24 A That's correct.

25 Q For the sake of these next